

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: QWEST CORPORATION	DOCKET NO. RPU-01-8 (TF-01-177)
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**ORDER SUSPENDING PROPOSED TARIFF AND
ESTABLISHING PROCEDURAL SCHEDULE**

(Issued June 28, 2001)

On June 14, 2001, Qwest Corporation (Qwest) filed a proposed tariff with the Utilities Board (Board), introducing what Qwest describes in its cover letter as “three-digit dialing N11 Non Basic Service.” This service provides the end-user with the ability to dial a three-digit code (211, 311, 511, or 711) to connect to an information or referral service in which the general public may have an interest, as determined by the Federal Communications Commission (FCC). Qwest states that the FCC has determined that dialing 211 should connect the caller to health and community information services, 311 to non-emergency police and fire services, 511 to road and traffic information, and 711 to telecommunications relay services. The proposed tariff is identified as TF-01-177.

The tariff sets forth the terms and conditions Qwest proposes to apply to public agencies and others who intend to receive these N11 telephone calls. The four N11 telephone numbers are set out as separate, but substantially similar, sections of Qwest’s Iowa Tariff No. 1, with only minor differences among the services. Qwest

proposes nonrecurring charges of \$300 per “point-to number,” \$95 per central office switch translated, and \$0.05 per call routed to the service provider’s telephone number. These charges would apply to 211, 311, 511, and 711 services.

The Board will suspend Qwest’s proposed tariff for investigation because at least one, and perhaps more, of these services appears to be a “basic communications service” for which the proposed tariff may be unlawful. Qwest currently operates in Iowa pursuant to a price regulation plan under Iowa Code § 476.97 (2001), approved by the Board in Docket No. RPU-98-4. The statute and price regulation plan divide Qwest’s services into three categories: basic communications services, nonbasic communications services, and deregulated communications services. See Iowa Code § 476.96; Qwest price regulation plan Sections III, IV, and V. Rates for basic communications services are indexed to inflation and productivity changes, see § 476.97(3)(a)(5). Rates for nonbasic services may be increased or decreased at the discretion of Qwest, subject to a restriction that the increase in Qwest’s aggregate revenue-weighted nonbasic service prices cannot exceed 6 percent in any 12-month period. See Qwest price regulation plan, Section IV.C. Deregulated services are not subject to Board regulation, see Iowa Code § 476.1D.

Qwest filed TF-01-177 as a nonbasic communications service tariff. However, the price regulation statutory definition of “basic communications service” includes “dual party relay service.” Dual party relay service is the same thing as

telecommunications relay service, see Iowa Code ch. 477C. Thus, Qwest's proposal regarding 711 service, which is merely a means of dialing for telecommunications relay service, may be a price increase for a basic communications service that is not related to inflation or productivity and is therefore prohibited by the price regulation statute and plan. The Board will suspend TF-01-177 and direct Qwest to file evidence and argument supporting its contention that 711 service is a nonbasic communications service.

Moreover, the definition of "basic communications service" found in § 476.96(1) authorizes the Board to classify any other two-way switched communications services as basic communications services consistent with community expectations and the public interest. In reviewing Qwest's proposal, it appears the other N11 services might more appropriately be classified as basic communications services, along with 911, E-911, and dual party relay service (711). The FCC found these other N11 services to be imbued with a public interest, such that these special dialing arrangements have been assigned nationally for these specific purposes. Moreover, it appears these are not services that can be purchased on a competitive basis; if a community information and referral service provider intends to receive all 211 calls in a specific geographic area, for example, it appears the service provider would have to purchase 211 service from Qwest and from every CLEC and wireless or cellular company serving the territory, see Sections A.2.a and A.2.n of TF-01-177. If this is the case, and if 211 service is a nonbasic

communications service, then Qwest could charge monopoly prices for this public service. Under these circumstances, it is possible that after hearing evidence and argument the Board will conclude that community expectations and the public interest require that these services be classified by rule as basic communications services. Qwest will be directed to address this issue, as well.

There is also a question concerning Qwest's proposed charges for these services. Qwest offers no support for its proposed charges, leaving the Board and the public with no means of judging the whether the prices of these services are lawful, as contemplated by Section IV.C.3 of the Qwest price regulation plan. Typically, this is not a critical issue for new, nonbasic communications services, which are likely to be optional or competitive services such that the Board can rely upon the marketplace to ensure the prices, terms, and conditions are reasonable, but these services are closely associated with the public interest and may not be competitive. Under these special circumstances, some form of cost support appears to be necessary and appropriate. The Board will direct Qwest to submit evidence and argument in support of its proposed rates, as well.

Finally, there may be other issues presented by the other terms and conditions proposed by Qwest. For example, for 211, 311, and 511 service, Sections 10.11.3.A.2.j, B.2.j, and C.2.j of the tariffs provide that if two or more subscribers for the service have a dispute regarding their geographic coverage, the matter will be referred to the Board. The Board is aware that in the FCC's "First

Report and Order and Further Notice of Proposed Rulemaking” in CC Docket No. 92-105, In the Matter of the Use of N11 Codes and Other Abbreviated Dialing Arrangements, 12 FCC Rcd 5572 (1997) (the First Report and Order), the FCC stated that it would allow LECs, states, and Bellcore to continue to perform the N11 code administration functions that they performed prior to passage of the 96 Act, at least until further FCC action was taken. (First Report and Order, paragraph 2.) Later in the same order, the FCC indicated its intent to transfer certain unspecified N11 administrative duties to the North American Number Plan Administrator (NANPA) once that administrator was hired. However, the FCC also made a partial delegation of authority to the states. Paragraph 37 of the First Report and Order provides:

We also leave with local jurisdictions in the first instance the discretion to determine whether 311 should be used locally to reach other government services, as the Department of Justice has suggested. Local jurisdictions can better determine whether this code could or should be used for access to services in addition to non-emergency police services. We find that state public utilities commissions, in conjunction with state and local governments, can address any conflicting requests for use of 311 (for example situations in which city and county law enforcement agencies both request 311 implementation in the same geographic area) better than us.

(Footnote omitted.) Thus, the FCC delegated to the states the locally-oriented issues like conflicting requests for use of 311, at least until the North American Numbering Plan Administrator was hired. That administrator has since been hired,

so the scope of the Board's jurisdiction to resolve 311 geographic disputes is unclear.

The situation with respect to 211 and 511 is even less clear. For example, the FCC assigned 211 to community information and referral services in its "Third Report and Order and Order On Reconsideration" in the same docket, issued on July 31, 2000 (the Third Report and Order). In assigning 211 for this use, the FCC said that it was acting in a similar manner as it did in the assignment of 311. (Third Report and Order at paragraph 21.) The FCC recognized that the class of potential 211 providers is even broader than the 311 service providers, increasing the possibility of conflicting requests, but the only guidance the FCC offered is that "[w]e expect community service organizations to work cooperatively to ensure the greatest public use of this scarce resource." (Id.) The FCC did not expressly delegate any authority to the Board regarding use of 211 for community information and referral services. However, the FCC did say it was acting on 211 in a manner similar to its actions with respect to 311. Thus, it is possible the FCC will delegate to the states the task of resolving conflicting local claims for 211, but it appears no such delegation has been made to date. Qwest will be directed to file testimony supporting the reasonableness of the proposed tariff language referring these potential customer disputes to the Board for resolution.

Another issue the Board will direct Qwest to address in its testimony concerns the proposed indemnification language of Section 10.11.3.A.2.o(3) (and

the matching sections for 311, 511, and 711 service). The proposed language would require each N11 subscriber to indemnify Qwest in a wide variety of actions. The scope of this requirement is potentially troubling when applied to services that are closely tied to the public interest.

These are only examples of some of the issues presented by the terms and conditions of Qwest's proposed tariff. Qwest's testimony should offer support and justification for each of these provisions.

Qwest's price regulation plan contemplates that the Board will complete its review of any proposed tariff relating to nonbasic communications services within ninety days of the filing date, see Section IV.C.3. This requirement does not apply to the 711 section of this tariff, and may not apply to the other sections of the tariff if the Board concludes the other N11 services should be classified as basic communications services. Nonetheless, the Board will establish a procedural schedule that will bring this matter to a conclusion by September 12, 2001, consistent with Qwest's filing of these rates as nonbasic services. Because the available time is so limited, the Board will be unable to grant extensions of time in this docket absent the most compelling circumstances.

IT IS THEREFORE ORDERED:

1. Pursuant to Section IV.C.2 of Qwest's price regulation plan, the rates and charges proposed in TF-01-177 are suspended for investigation of the prices, terms, and conditions proposed therein. The remaining terms and conditions

proposed in TF-01-177 will become effective on the proposed effected date of June 29, 2001, subject to revision or modification at the conclusion of this proceeding.

2. The procedural schedule in this matter will be as follows:

a. Qwest and any intervenors supporting Qwest's proposal shall file any prepared direct testimony, with supporting exhibits and workpapers, on or before July 13, 2001. At a minimum, such testimony shall address each of the issues discussed in this order.

b. The Consumer Advocate Division of the Iowa Department of Justice and any intervenors opposed to Qwest's proposed tariff shall file testimony, with supporting exhibits and workpapers, on or before July 27, 2001.

c. Qwest and any intervenors supporting Qwest's proposal shall file rebuttal testimony, with supporting exhibits and workpapers, on or before August 3, 2001.

d. A hearing for the purpose of receiving testimony and cross-examination of all testimony will commence at 9 a.m. on August 15, 2001, in the Board's hearing room at 350 East Maple Street, Des Moines, Iowa. Parties shall appear at the hearing one-half hour prior to the time of hearing to mark exhibits. Persons with disabilities requiring assistive services or

devices to observe or participate should contact the Board at 515-281-5256 to request that appropriate arrangements be made.

d. Any party desiring to file a brief may do so on or before August 24, 2001.

3. In the absence of objection, all workpapers shall become a part of the evidentiary record at the time the related testimony and exhibits are entered in the record.

4. In the absence of objection, all data requests and responses referred to in oral testimony or cross-examination, which have not previously been filed with the Board, shall become a part of the evidentiary record. The party making reference to the data request or response shall file an original and six copies at the earliest possible time.

5. In the absence of objection, if the Board calls for further evidence on any issue and that evidence is filed after the close of hearing, the evidentiary record shall be reopened and the evidence will become a part of the evidentiary record five days after filing. All evidence filed pursuant to this paragraph shall be filed no later than seven days after the close of hearing.

6. Pursuant to 199 IAC 7.7(2) and (11), the time for filing responses or objections to data requests and motions will be shortened to five days from the date the motion is filed or the data request is served. All data requests and motions

should be served by facsimile transfer or by electronic mail, in addition to United States mail.

UTILITIES BOARD

/s/ Allan T. Thoms

ATTEST:

/s/ Sharon Mayer
Acting Executive Secretary, Asst. to

/s/ Diane Munns

Dated at Des Moines, Iowa, this 28th day of June, 2001.